



**IN THE COMPETITION
APPEAL TRIBUNAL**

B E T W E E N :

Case No.: 1304/7/7/19

JUSTIN GUTMANN

Class Representative

– v –

(1) FIRST MTR SOUTH WESTERN TRAINS LIMITED

(2) STAGECOACH SOUTH WESTERN TRAINS LIMITED

Defendants

Case No.: 1305/7/7/19

JUSTIN GUTMANN

Class Representative

– v –

(1) LONDON & SOUTH EASTERN RAILWAY LIMITED

(2) GOVIA LIMITED

(3) THE GO-AHEAD GROUP LIMITED

(4) KEOLIS (UK) LIMITED

Defendants

JUSTIN GUTMANN

Class Representative

– v –

(1) GOVIA THAMESLINK RAILWAY LIMITED

(2) GOVIA LIMITED

(3) THE GO-AHEAD GROUP LIMITED

(4) KEOLIS (UK) LIMITED

Defendants

CONSENT ORDER

UPON the Order of the Tribunal of 5 April 2023 directing that Cases 1304/7/7/19, 1305/7/7/19 and 1425/7/7/21 (together, the “**Proceedings**”) shall be jointly case managed and tried together, with evidence in one to stand as evidence in the other so far as relevant

AND UPON First MTR South Western Trains Limited (“**First MTR**”) providing disclosure to the Class Representative on 2 February 2024 in accordance with the Tribunal’s Order dated 22 November 2023

AND UPON First MTR notifying the Class Representative in correspondence that it considered certain documents disclosed on 2 February 2024 as listed in Schedule 1 to this Order (the “**Disputed Documents**”) to be privileged and that such documents were inadvertently disclosed

AND UPON the Class Representative contesting First MTR’s claims to privilege over the Disputed Documents and asserting that they were not disclosed as the result of an obvious mistake

AND UPON the Class Representative’s application dated 26 April 2024 for (a) a determination that the Disputed Documents are not privileged; alternatively (b) permission for the Class Representative to rely on the Disputed Documents or their contents in the Proceedings, pursuant to Rule 65 of the Competition Appeal Tribunal Rules 2015 (the “**Rule 65 Application**”)

AND UPON First MTR agreeing to waive any privilege in the Disputed Documents to the extent necessary to permit their use in the Proceedings, and on the basis that the parties agree that such agreement does not imply any wider waiver of privilege, including in respect of other documents dealing with the same subject matter as the Disputed Documents that have not been disclosed for inspection in the Proceedings

IT IS ORDERED BY CONSENT THAT:

1. The Rule 65 Application is withdrawn.
2. First MTR shall pay, within 15 working days of this Order, the Class Representative’s costs of the Rule 65 Application in the amount of £22,750.00.

The Honourable Mr Justice Roth
Chair of the Competition Appeal Tribunal

Made: 10 June 2024
Drawn: 10 June 2024